



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,691	02/27/2002	Peter W. Utecht	878	6392

7590 01/12/2005
Donald J. Ersler
725 Garvens Avenue
Brookfield, WI 53005

EXAMINER

HAUGLAND, SCOTT J

ART UNIT PAPER NUMBER

3654

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/084,691
Filing Date: February 27, 2002
Appellant(s): UTECHT ET AL.

MAILED

JAN 12 2005

GROUP 3500

Donald J. Ersler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 12, 2004.

(1) *Real Party in Interest*

Art Unit: 3654

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellants' statement of the grounds of rejection can be found under the heading "Issues" and is correct. The section headed "Grouping of Claims" is not required and has been disregarded.

Art Unit: 3654

(7) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Prior Art of Record

4,545,720	Cochran et al	10-1985
4,066,093	Egerstrom	1-1978

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 20-22, 24-29, 31-35, and 37-39 are rejected under 35 U.S.C. 103(a).

This rejection is set forth in a prior Office Action, mailed on 9/28/04.

(10) Response to Argument

Appellants cited cases in support of the impropriety of the rejection (see pages 5 and 6 of the brief). With regard to *In re Oetiker*, the references are seen to be analogous since both Egerstrom and Cochran et al are material handling vehicles. The vehicle of Cochran et al, as noted at col. 1, lines 11-14 is not limited to digging or earth working, but may be used for other types of material handling. An ordinary artisan in the field of the invention would consider Cochran et al and Egerstrom when dealing with the problem of transporting materials and equipment to a work site. Motivation to combine the references is present in the prior art since the apparatus of Egerstrom is intended to be used for charging drill holes in rock chambers which would be associated

Art Unit: 3654

with rough or unpaved terrain. It is clearly desirable that the equipment transported by the vehicle of Egerstrom be easily maneuvered over uneven terrain and into the rock chambers. The vehicle of Cochran et al is well adapted for this.

With regard to In re McLaughlin, the combination of Cochran et al and Egerstrom does not rely on knowledge gleaned only from applicants' disclosure as noted above.

With regard to Akzo N.V. v. United States International Trade Commission, there is nothing in the references that would teach away from the claimed invention. Nothing in Cochran et al would suggest that it would be undesirable or unfeasible to transport equipment such as a reel on the disclosed skid steer vehicle. There is no such suggestion in Egerstrom. It is clear from Egerstrom that any suitable vehicle may be used to transport the reel.

With regard to Graham v. John Deere Co., the rejection of the claims meets the criteria set forth. The level of skill in the art is such that an ordinary artisan would have appreciated the teachings of Cochran et al and Egerstrom as they relate to the problem of transporting loads to a work site and would have been aware of the advantages suggested by the references. Applicant has presented no evidence of secondary considerations as is discussed below.

Appellants argue that there is no motivation in either Cochran et al or Egerstrom for combining a hose feeding winch that is permanently mounted to the bed of a truck with a skid steer that has a quick coupler assembly.

However, there is seen to be motivation to combine the references in the prior art as noted above since the apparatus of Egerstrom is intended to be used for charging

Art Unit: 3654

drill holes in rock chambers which would be associated with rough or unpaved terrain. It would clearly have been desirable for the equipment transported by the vehicle of Egerstrom to be easily maneuvered over uneven terrain and into the rock chambers. The vehicle of Cochran et al is well adapted for this. Cochran et al teaches making a load support removable from a skid steer vehicle. This has the advantage that the vehicle may be used for various specialized purposes. Additional, specialized vehicles are not required. This benefit would clearly be applicable to many different types of loads. There is nothing in Egerstrom or Cochran et al to suggest that the equipment of Egerstrom would be unusable or incapable of being adapted to use on a removable support. As would be clear to an ordinary artisan, the hose and related equipment would be capable of use on any vehicle or any support which could adequately carry it. Egerstrom does not need to teach a base that may be attached to a skid steer vehicle, since Cochran et al teaches a structure for removably attaching a load support of any type to a skid steer vehicle.

Appellants argue that Egerstrom and Cochran et al teach away from appellants' invention since Egerstrom discloses moving a truck into a stationary position and positioning a charging hose end using a telescoping extension unit whereas appellants' apparatus is moved up to a hole for insertion of a hose into the hole and does not include a telescoping extension unit.

The claims, however, do not exclude the structure disclosed by Egerstrom. This structure is compatible with Cochran et al since an ordinary artisan would have been capable of mounting the fluid delivery apparatus taught by Egerstrom on a platform

Art Unit: 3654

removably mountable to the skid steer vehicle of Cochran et al. In addition, the apparatus of Cochran et al and Egerstrom are portable for the purpose of transporting their loads to within the required proximity of a site for use, so there is no conflict in their teachings.

Appellants further argue that the truck of Egerstrom has a width that is wider than a skid steer. However, Egerstrom does not place any limitations on the size of the truck. Cochran et al does not place any limitations on the size of the skid steer vehicle.

The claims do not specify a particular width. There are large and small skid steer vehicles. Since the vehicles and equipment of Egerstrom and Cochran et al can be made in a wide range of sizes and an ordinary artisan would have been capable of selecting a suitable size for a particular use and environment, there is no conflict in the teachings of the references.

Appellants argue that the truck of Egerstrom must be backed into an area, unlike a skid steer and is not capable of traveling over extremely rough terrain. However, there is no requirement that the truck of Egerstrom be backed into an area. This depends on the particular site layout and intended point of use. In any case, the additionally maneuverability, from which Egerstrom could clearly benefit, is one of the advantages of the vehicle of Cochran et al over a truck. This advantage suggests the desirability of transporting the fluid delivery equipment of Egerstrom on a skid steer vehicle to make it easier to reach the desired point of use of the equipment.

With regard to appellants' assertion that a skid steer is used for digging and a truck is used for hauling, it is noted that skid steer vehicles in general, and that of

Art Unit: 3654

Cochran et al in particular, can and are used for hauling and the vehicle of Cochran et al is adapted to be even more specialized for non-digging operations (col. 1, lines 11-14).

Appellants argue that secondary considerations must be considered, specifically that appellants' invention has a lower manufacturing cost and greater ease of manufacturing than the apparatus resulting from the combination of Cochran et al and Egerstrom. However, appellants have not presented any evidence of commercial success or other secondary considerations. In addition, since the combination of Cochran et al and Egerstrom reads on the claimed invention, appellants assertion that appellants' invention has a lower manufacturing cost and greater ease of manufacturing does not appear supportable. Any showing of unobviousness based on secondary considerations would require a nexus between the claimed invention and the secondary considerations.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

sjh
January 4, 2005

Conferees
Kathy Matecki *Belh*
John Jillions *smj*

Donald J. Ersler
725 Garvens Avenue
Brookfield, WI 53005.